

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

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AMERICAN BUDDHA, an Oregon  
Nonprofit corporation,

Plaintiff,

vs.

NO. 06-CV-3054-PA

THE CITY OF ASHLAND and THE  
WASHINGTON POST COMPANY,

ORIGINAL

Defendants.

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**DEPOSITION OF MICHAEL W. FRANELL**

FRIDAY, NOVEMBER 3, 2006

12:30 P.M.

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LAURA L. SMITH, RPR, OR CSR #97-0340, CA CSR #2731

Certified Court and Deposition Reporter  
2305-C Ashland Street, PMB 228  
Ashland, Oregon 97520

(541) 488-4677

## APPEARANCES

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For the Plaintiff:

BY: CHARLES CARREON, Attorney at Law  
423 Gateway Drive, #64  
Pacifica, California 94044  
650-735-5277

For the Defendant City of Ashland:

HOFFMAN HART WAGNER, LLP  
BY: KAREN O'KASEY, Attorney at Law  
1000 S.W. Broadway, 20th Floor  
Portland, Oregon 97205-3070  
503-595-1242

For the Defendant (via telephone): The Washington  
Post Company:

WILLIAMS & CONNOLLY  
BY: KEVIN HARDY, Attorney at Law  
725 12th Street, N.W.  
Washington, D.C., 20005  
202-434-5257

Also present: Mrs. Tara Carreon

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EXHIBITS

(Nothing marked.)

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1 BE IT REMEMBERED, that on FRIDAY, NOVEMBER 3, 2006,  
2 commencing at the hour of 12:30 P.M., at the office of the  
3 City of Ashland Legal Department, 20 East Main Street,  
4 Ashland, Oregon, before me, LAURA L. SMITH, a Certified  
5 Shorthand Reporter in and for the states of Oregon and  
6 California, there personally appeared:

7 MICHAEL W. FRANELL,

8 a witness in the above-entitled action, called by the  
9 plaintiff, who, being by me first duly sworn, was examined  
10 and testified as follows:

11 EXAMINATION BY MR. CARREON

12 MR. CARREON: Perhaps we could go off the record  
13 briefly and discuss the ground rules for what we are doing  
14 here, because I don't want to spend all day.

15 MS. O'KASEY: Sure.

16 (Conversation held off the record.)

17 MR. CARREON: Back on the record.

18 Mr. Franell is the city attorney for the city of  
19 Ashland, and as such, I have agreed with Ms. O'Kasey that  
20 she will articulate a single objection on the record at this  
21 time which she may interpose by saying, "same objection,"  
22 with respect to any questions which she finds subject to  
23 privilege.

24 MS. O'KASEY: The basis for the objection is that  
25 because Mr. Franell is the city attorney, there may be,

1 during the course of this deposition, questions that will  
2 require an answer that would invade the attorney-client  
3 privilege, so when such a question is asked, I will  
4 basically make the same objection and I'll refer to it as my  
5 earlier objection based on privilege.

6 MR. CARREON: All righty.

7 Q Mr. Franell, the documents that we have been  
8 discussing with the other witnesses here today that I'd like  
9 to address with you are, first of all, Exhibit 2, which  
10 appears to be an e-mail from Kathleen Parker to  
11 abuse@ashlandfiber.net, and I'd ask you, was that document  
12 forwarded to you by Mr. Holbo, as he was uncertain?

13 A Yes.

14 Q Did you have any telephone conversations or e-mail  
15 exchanges with Mr. Holbo about Exhibit 2?

16 A Yes.

17 Q And were his decisions, as he expressed them here  
18 at deposition, with regard to what the City of Ashland would  
19 do with Exhibit 2, were those, say, in the course and scope  
20 of his employment?

21 He wasn't on a lark and a frolic? He did what he  
22 was supposed to do?

23 A Yes.

24 Q Did you have any conversations with anyone from the  
25 Washington Post?

1 A No.

2 Q Did you have any conversations with Ms. Kathleen  
3 Parker?

4 A No.

5 Q Mr. Parker?

6 A No.

7 Q Jon Dowd?

8 A No.

9 Q Anyone at InfoStructure?

10 A No.

11 Q Mr. Joe Franel?

12 Maybe I should clarify it as to time.

13 A Yes.

14 Q Before the decision was made by Mr. Holbo and  
15 Mr. Dowd to turn off the modem that was servicing --

16 A No.

17 Q -- American-Buddha.net?

18 Q With regard to Exhibit 1, the AFN copyright  
19 infringement process, would you confirm what Mr. Holbo said,  
20 that he prepared that without your input?

21 A Yes.

22 Q Is a formal DMCA policy under consideration or in  
23 preparation at this time?

24 A I have received a request to assist AFN in  
25 developing a policy.

1 Q And so when that -- when that is done, will it be  
2 posted on the web site to inform people about that?

3 A I am not sure how I will inform them about that.

4 Q And do you expect that that policy will be  
5 formulated within, say, the next month?

6 A I anticipate that it would be formulated within the  
7 next month.

8 Q And I take it you would have no problem having  
9 Ms. O'Kasey forward a copy of that to me when it is  
10 prepared?

11 A Not at all.

12 Q Okay. Are there any written communications that  
13 have been generated by AFN concerning this matter that are  
14 not before us here as Exhibit 1, 2, 3, or 5?

15 A There are written communications between Mr. Holbo  
16 and myself.

17 Q And were those -- if we were to date those written  
18 communications, would they be August 1st, August 2nd, or  
19 thereafter?

20 A There was some on August 2nd and there are some  
21 thereafter.

22 Q All right. And you have -- it's -- those  
23 communications contained legal advice from you to Mr. Holbo,  
24 as an AFN employee --

25 A Yes.

1 Q -- for the City of Ashland?

2 Were those communications, at any time, was the  
3 substance of them disclosed to any person who was not a  
4 party to that advice?

5 A No.

6 Q We can take a brief break here. My client -- I  
7 have got to know where she is.

8 (Recess in proceedings.)

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10 MR. CARREON: I think I'm done.

11 MS. O'KASEY: Kevin, do you have any questions?

12 MR. HARDY: No, I don't.

13 MR. CARREON: Back on the record, no questions from  
14 counsel.

15 MS. O'KASEY: I have no questions.

16 MR. CARREON: We may adjourn.

17 MS. O'KASEY: Thank you.

18 THE WITNESS: Thank you.

19 (Deposition concluded at 12:29 p.m.)

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REPORTER'S CERTIFICATE

STATE OF OREGON            )  
  )    ss.  
COUNTY OF JACKSON        )

I, LAURA L. SMITH, a Certified Shorthand Reporter  
and Notary Public for the State of Oregon, do hereby  
certify:

That the witness, MICHAEL W. FRANELL, was present at  
the time and place herein set forth and was by me sworn to  
testify as to the truth;

That the said proceedings were recorded  
stenographically by me and were thereafter transcribed under  
my direction via computer-assisted transcription;

That the foregoing transcript is a true record of  
the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have affixed my seal and  
subscribed my name on January 11, 2007.

